

TESTIMONY BEFORE THE
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION

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Thank you for inviting me to speak with you about an issue that presents a challenge -- and a terrific opportunity -- to protect our youth from the nation's deadliest preventable problem of smoking. In movies, in spite of historic restrictions on tobacco marketing and advertising under the 1998 Tobacco Master Settlement Agreement (MSA), depictions of smoking and tobacco brand appearances persist. These depictions and brand appearances undermine public confidence in, and effectiveness of, the MSA -- a landmark legal document designed in large part to prevent youth smoking by stopping pervasive tobacco campaigns that glamourize and normalize this deadly behavior. Given the compelling scientific evidence that these depictions can promote smoking among youth, and because the tobacco companies deny that they are to blame for what appears in the movies, my colleague attorneys general and I have sought the voluntary cooperation of the movie industry to protect our children from smoking. I am pleased to tell you today about our efforts to spread this important message to all facets of the movie industry who have been willing to listen. I commend Senator McCain and this committee for holding hearings to consider the problem and the opportunities for powerful and voluntary actions by the movie industry.

TOBACCO LITIGATION & THE 1998 MASTER SETTLEMENT AGREEMENT (MSA)

In Maryland and in every state across this country, tobacco has taken a miserable toll on our citizens, with its enormous cost measured in dollars spent as well as lives lost. When I filed Maryland's lawsuit in 1997 against the four largest tobacco companies, as did my fellow Attorneys General from across the country, we sought restitution for the billions of dollars paid by our states to treat tobacco related illnesses. Just as important, we also sought to stop the tobacco companies' campaigns that target and encourage our children to purchase and consume tobacco products.

In November 1998, I was one of the 46 state Attorneys General who signed the historic MSA which settled our state suits. Under the MSA, the tobacco companies are required to pay Maryland and the other settling states more than \$200 billion over 25 years. Equally important, tobacco companies are required to forever change the way that they advertise and market their products, never again targeting our youth or making tobacco brand names ubiquitous through apparel or other merchandise, billboard and bus ads, sponsorships or, of particular concern here today, product placements in the media, including movies.¹

The MSA states in relevant part:

No participating tobacco manufacturer may . . . make, or cause to be made, any payment or other consideration to any person or entity to use, display, make reference to or use as a prop any Tobacco Product, Tobacco

¹The MSA prohibits, generally and with exceptions not listed here: any action to target youth in the advertising or marketing of tobacco products; cartoons in cigarette advertising or packaging; outdoor and transit ads; brand name sponsorships of concerts or sporting events and naming rights to sports venues; tobacco brand name merchandise; free samples of tobacco products; tobacco coupons or credits to children; and payment for use of tobacco products in the media.

Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game ("Media")

MSA, Section III (e).² Moreover, the MSA also prohibits the participating manufacturers from authorizing any third party to use a brand name in a way in which a participating manufacturer may not.³

IN SPITE OF THE MSA PROHIBITIONS, DEPICTIONS OF SMOKING AND BRAND APPEARANCES PERSIST IN THE MOVIES

In spite of these express prohibitions, smoking in movies – particularly in youth rated movies – remains as prevalent today as it was before the MSA – and by some measures has increased.⁴ Since the MSA, movie stars continue to smoke on-screen.⁵

² Under the MSA, "Tobacco Products" means cigarettes and smokeless tobacco products. Section II (vv).

³ MSA Section III(i) provides that "no Participating Manufacturer may license or otherwise expressly authorize any third party to use or advertise within any Settling State any Brand Name in a manner prohibited by this Agreement if done by a Participating Manufacturer itself. . . . Following such written notice, the Participating Manufacturer will promptly take commercially reasonable steps against any such non-de minimis third party activity."

⁴ The current overall prevalence of smoking in movies is reflected in a study of 776 post-MSA movies released between 1999 and 2003 which found that 80% (619 of 776) of the movies showed tobacco use. Of that number, almost 90% (324 of 371) of R-rated movies included smoking, 80% (260 of 330) of PG-13 and almost half (35 of 75) of PG and G rated films had images of smoking in them. Polansky, J and Glantz, S., *First-Run Movie Presentations in U.S. Movies 1999-2003*, available at <http://repositories.cdlib.org/ctcre/tcpmus/Movies2004/>.

A 2002 comparison of the top 42 grossing PG-13 films and video rentals from the two years before and after the MSA reported a 50% increase (from 1,288 frames/53 seconds pre-MSA to 1,938 frames/81 seconds post-MSA) in the average time tobacco products were on screen. The study also found that tobacco was used in 82% (18 of 22) of PG-13 post-MSA movies, up from 80% (16 of 22) of PG-13 pre-MSA movies. Massachusetts Public Interest Research Group (2002) *Tobacco at the Movies: Tobacco*

Most films portray smokers and smoking in a positive or neutral light and few films appear to contain negative statements about tobacco use.⁶ Moreover, even after the MSA, movies continue to show tobacco brand names.⁷

THE TOBACCO COMPANIES DENY A ROLE IN MOVIE BRAND APPEARANCES

In March 2003, my colleague California Attorney General Bill Lockyer wrote to each of the four major tobacco companies to express concern over depictions of smoking and tobacco brand appearances since the MSA. In light of the MSA's express prohibitions, General Lockyer asked each manufacturer whether it had played a role in the appearance of its cigarette brands in post-MSA movies identified in his letters. All four companies denied any role in the appearances of their products in movies.

Use in PG-13 Films, <http://masspirg.org/MA.asp?id2=8330&id3=MA&> ("MASSPIRG Study"). A review of smoking in a random sample of major motion pictures from 1950 through 2002 revealed that smoking incidents declined from 10.7 incidents per hour in 1950 to a minimum of 4.9 incidents in 1980 -1982 but increased to 10.9 incidents per hour in 2002. Glantz, S., Kacirk K., McCullough, C. Back to the Future: Smoking in Movies in 2002 Compared with 1950 Levels. *Am. J. Pub. Health* 2004; 94:261-263.

⁵ Reported post-MSA on-screen smokers include Julia Roberts, Mel Gibson, Nicolas Cage, Ben Stiller, Drew Barrymore, Eddie Murphy, Will Smith, and Kevin Kline, Sissy Spacek, Rebecca Romjin Stamos, and Samuel L. Jackson.

⁶ Negative portrayals of tobacco rarely occurred in movies prior to the MSA, see Dalton, M.A., et al. The Incidence and Context of Tobacco Use in Popular Movies from 1988 to 1997, *Prev Med* 2002; 34: 516 - 523. The MASSPIRG Study found 83% (15 of 18) of post-MSA movies with tobacco use showed characters with either positive or neutral attitudes toward smoking and reported a decline in negative portrayal of tobacco use from 31% (5 of 16) of pre-MSA movies to 17% (3 of 18) of the post-MSA movies. Additional information about portrayal of tobacco use in current movies is available from The "Thumbs Up! Thumbs Down!" Project of the American Lung Association of Sacramento-Emigrant Trails, <http://www.saclung.org/thumbs/TUTDreports.htm>.

⁷ Examples of recent movies with reported cigarette brand appearances include *Twisted*, *Mona Lisa Smile*, *Men in Black II*, *Life or Something Like It*, *City By The Sea* and *In The Bedroom*, among others.

Indeed, at General Lockyer's urging that the tobacco companies take commercially reasonable steps against brand appearances, Philip Morris, Lorillard and R.J. Reynolds have sent letters notifying movie studios that they do not want their products to appear in the movies. Most recently, we are pleased that R.J. Reynolds asked one studio to remove references to its tobacco brand names from a movie before the film is released on DVD or video or licensed for broadcast.

RECENT DECLINES IN YOUTH SMOKING HAVE COME AT GREAT EFFORT AND EXPENSE.

The good news is that nationwide, after peaking in the two years before the MSA, overall youth smoking has been declining.⁸ Although the figure remains too high, the recent successes are the result of great effort and expense on many fronts. In addition to the MSA and its continued enforcement by state attorneys general, all levels of government and private organizations have expended massive resources in youth smoking prevention and cessation campaigns. Across the nation, states and local governments have increased tobacco excise taxes to reduce smoking, particularly among youth.⁹ To restrict youth access to tobacco at the point of purchase, many

⁸ In terms of long term national trends among twelfth graders who are current smokers, after a peak of 37% in 1997, there has been a consistent decline by one-third to 24% in 2003. In 1990, 29.4% of all twelfth grade students were current smokers. Johnston, L.D., et al. (2004) Monitoring the Future - national results on adolescent drug use: Overview of key findings, 2003. (NIH Pub. No. tba.) Bethesda MD: National Institute on Drug Abuse. Available at www.monitoringthefuture.org.

⁹ In Maryland, for example, cigarette excise taxes per pack were \$.16 in 1991 and were increased to \$.36 in 1992, \$.66 in 1999, and to the present rate of \$1.00 in 2002. As of June 2003, Maryland has the 12th highest cigarette excise tax rate in the country.

other attorneys General and I have reached voluntary agreements with some of the nation's largest tobacco retailers to establish responsible tobacco retailing practices and compliance check mechanisms.¹⁰ In response to the growing problem of youth access to tobacco over the internet, several state attorneys general and I have filed suits and reached settlements to stop the sale of tobacco to kids over the internet.

THE MSA IS NOT SELF-ENFORCING

The MSA is not self-enforcing and requires constant vigilance. Through the National Association of Attorneys General, Maryland works with other settling states continuously to implement, monitor and enforce the terms of the MSA. Since 1998, after informal attempts failed, individual states have been forced to file actions in state courts to stop one tobacco company from violating the youth targeting, brand name, free samples and outdoor advertising restrictions of the MSA.

DESPITE ALL THESE EFFORTS, YOUTH SMOKING REMAINS A DEADLY EPIDEMIC.

Tobacco remains the nation's single largest cause of preventable death, accounting for over 400,000 deaths every year, more than caused by AIDS, alcohol, firearms, toxic agents, motor vehicles, sexual behavior, and illegal drugs **combined**. We know that 80% of all daily adult smokers begin smoking before age 18. This means that if we can prevent teens from smoking their first cigarette before their 18th birthday, they likely will never start. Unfortunately, every day in this country, more than 2,000 young people (under age 18) start smoking.

¹⁰To date, the Attorneys General have reached voluntary agreements establishing tobacco retail practices to prevent youth access with national retailers Walgreens, BP Amoco, Exxon/Mobil, ARCO, Wal-mart and Sam's Club.

KIDS, MOVIES, AND SMOKING

By any measure, our nation's youth are an important segment of movie audiences. According to the Motion Picture Association of America, 46% of all teens ages 12 -17 go to the movies at least once a month – a higher rate than all other age groups. These same teens represent 16% of total yearly movie admissions, a rate 5% higher than their U.S. population.¹¹

DO MOVIES REFLECT THE REALITY OF SMOKING?

In spite of the frequency of smoking depicted in movies, today 77% of adults in this country do not smoke. Indeed, in Maryland, this figure is closer to 85%. Moreover, due to hard-fought successes in state and local legislatures, there are an increasing number of smoke-free places in this country: six states and 266 municipalities require smoke-free workplaces, including restaurants and bars, and over 30 states and 641 municipalities have laws restricting smoking in workplaces, restaurants, and/or bars.

THE DARTMOUTH STUDY

I am pleased that the Committee also has invited Dr. Madeline A. Dalton, Assistant Professor of Pediatrics at Dartmouth Medical School, to testify today. As lead author of the June 2003 study published in The Lancet medical journal, Dr. Dalton will be able to convey to you the profound consequences on smoking initiation – a three-fold increase – among children ages 10 -14 who viewed the greatest number of

¹¹ A January 2003 Arbitron Cinema Advertising Study similarly reported that 71% of teens ages 12-17 reported last-month movie going, followed by adults 18-24 as the next highest group at 61%. Compared with the U.S. population, cinema audiences are 75% more likely to be teens 12 -17, followed by adults 18-24 at 51% more likely. The study is available at <http://www.natoonline.org/Cinema%20Advertising%20Study.pdf>.

smoking depictions in movies, after controlling for all other factors known to influence smoking. Funded by the National Cancer Institute and lauded as the strongest evidence to date, the study suggests that eliminating youth exposure to smoking in movies could significantly reduce youth smoking initiation.

**IN LIGHT OF THE SCIENTIFIC EVIDENCE AND POLICY RECOMMENDATIONS,
ATTORNEYS GENERAL SEEK COOPERATION OF THE MOVIE INDUSTRY**

In August 2003, compelled by the findings of the Dartmouth study, I wrote a letter, joined by the Attorneys General of 27 states, to Mr. Jack Valenti, President of the Motion Picture Association of America (MPAA), seeking cooperation of the motion picture industry to reduce the depiction of smoking in movies. Mr. Valenti promptly responded by extending an invitation to my colleagues and me to meet and share with him the details of the study. Mr. Valenti further proposed setting up a round-table in discussion in Los Angeles with representatives of the creative guilds and movie production companies.

My colleagues and I have been pleased to accept Mr. Valenti's offer, several times over. In October 2003, Connecticut Attorney General Richard Blumenthal, former Pennsylvania Attorney General Mike Fisher, Utah Attorney General Mark Shurtleff, Vermont Attorney General Bill Sorrell, and I met with Mr. Valenti and his staff in Washington, D.C. We were pleased that United States Senator John Ensign of this Committee also attended the meeting. After presenting the research, Dr. James D. Sargent, a pediatrician and lead investigator of the Dartmouth study, handed Mr. Valenti the following "prescription" which mirrors the policy recommendations endorsed by a growing number of our leading major medical and public health organizations:

- Give smoking movies an R-rating
- Eliminate brand identification;
- Certify that no consideration was received for smoking in the movie; and
- Run anti-smoking messages before any movie that depicts smoking.¹²

Since our initial October 2003 meeting, my colleague attorneys general and I have taken our message, accompanied by Dr. Dalton and Dr. Sargent, to other members of the movie industry. As proposed by Mr. Valenti, on December 17, 2003, we spent a morning in Los Angeles at the Directors Guild of America (DGA) with their executive staff and many of the talented directors who serve on the DGA's Social Responsibility Task Force. Later that same day, we met and discussed the Dartmouth research and its implications for movies and youth smoking with senior production executives of the MPAA studios: Metro-Goldwyn-Mayer Studios, Paramount Pictures, Universal Pictures, Warner Bros., Sony Pictures Entertainment, Walt Disney Pictures, and 20th Century Fox Film Corporation. Representatives of the Screen Actors Guild and the Writers Guild of America also participated in the afternoon discussion. In these two sessions, after Dr. Dalton presented her findings, the attorneys general, again joined by Senator Ensign, voiced our concerns directly to these directors, writers, actors and movie studio executives that depictions of smoking in their youth rated films and

¹² The four smoking in movies recommendations "prescribed" by Dr. Sargent were originally proposed by Dr. Stanton Glantz, SmokeFreeMovies Project at the University of California, San Francisco and have been endorsed by: World Health Organization; American Medical Association; American Academy of Pediatrics; American Legacy Foundation; Society for Adolescent Medicine; American Academy of Allergy Asthma & Immunology; American Heart Association; American Lung Association; and Campaign for Tobacco Free Kids.

the persistence of cigarette brand names in any movie works against the goals of the MSA. We encouraged them to adjust and enhance their voluntary movie ratings system – designed to provide America’s parents with the information necessary to make informed and responsible decisions about their kids’ movie-going choices – so that parents can be as informed about smoking in movies as they currently are about foul language. Given the state attorneys general’s responsibility to enforce the MSA prohibition against cigarette brand placements in the media by tobacco companies, we also asked for the opportunity to learn more from the MPAA studio executives about the circumstances surrounding appearances of cigarette brands in movies.

Our efforts did not stop in Hollywood. Most recently, we have taken our message to the National Association of Theatre Owners. Just a few weeks ago, Vermont Attorney General Bill Sorrell, Dr. Dalton and I had the opportunity to address the NATO Board of Directors at its annual meeting in Washington, D.C. In addition to the Dartmouth research, Dr. Dalton also reviewed the promising findings that anti-smoking public service announcements (PSA’s) run before movies can “innoculate” youth to depictions of smoking in films.¹³ Given NATO’s joint power with the MPAA over the movie ratings system and its members’ exclusive control over their movie screens, NATO has a unique opportunity to protect our youth from smoking by making smoking a criterion in movie ratings (equal to foul language) and by running anti-

¹³ Pechmann, C., Shih, C-F. Smoking scenes in movies and antismoking advertisements before movies: effects on youth. *J. Marketing*. 1999; 63(3) 1-13.

smoking PSA's before movies.¹⁴ My colleagues and I look forward to NATO's response to our very recent proposals.

And, because we believe that educating the movie industry is a crucial first step toward achieving the changes we seek in reducing youth exposure to smoking depictions and eliminating cigarette brand appearances, we are very pleased to report that the DGA has agreed to feature an article on this important subject in the June issue of its widely circulated magazine. We are hopeful that this message will be communicated most effectively by directors to directors and other movie makers and will guide their creative decisions.

With regard to the MPAA and its member studios, we will continue our educational efforts by seeking mutually agreeable ways to sensitize these individuals and organizations to the public health benefits of reducing youth exposure to smoking depictions and eliminating cigarette brand name appearances.

CONCLUSION

Reducing youth smoking has long been a priority for me and for my colleague attorneys general. I am very pleased that the Senate is taking a look at new ways of addressing the problem as it relates to the movies our children watch. Reducing youth

¹⁴ The American Legacy Foundation, created under the MSA, recently reported that 74% of the U.S. adults surveyed support showing brief PSA's in theaters to counteract the influence of smoking in movies on young people. American Legacy Foundation, American Smoking and Health Survey (ASHES), a nationally representative telephone survey of 2800 U.S. adults from May to September 2003 designed to measure adult tobacco use, cessation and knowledge about the dangers of secondhand smoke. Release dated March 9, 2004 available at www.americanlegacy.org.

exposure to depictions of smoking and eliminating tobacco brand appearances in movies will require bold action but I believe the movie industry shares our goal of protecting the health of children and, therefore, is up to the task.

Thank you.